

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

PATRICK RONALD RUSSELL,

Plaintiff,

V.

**FRANCIS BRITTEN, et al., ROBERT
HOUSTON, and KEITH BROADFOOT,**

Defendants.

CASE NO. 8:08CV145

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's Motion to Change Venue and For Recusal (Filing No. [30](#)), Motion for Reconsideration (Filing No. [19](#)), and Motion for Leave to File an Amended Complaint (Filing No. [26](#)). Defendants have not responded to any of these Motions.

I. Motion to Change Venue and For Recusal

In his Motion to Change Venue and For Recusal, Plaintiff seeks to have this matter “transferred to the Lincoln branch” of the court. (Filing No. [30](#).) Plaintiff makes his request, among other reasons, because the undersigned District Court Judge “was an employee of the Attorney Generals Office.” ([Id.](#) at CM/ECF p. 1.) However, there is no indication that the undersigned judge had any involvement in any of the events underlying Plaintiff’s claims in this matter. Therefore, in accordance with [28 U.S.C. 455\(a\)](#), there is nothing indicating that the court’s “impartiality might reasonably be questioned.” In light of this, the Motion to Change Venue and for Recusal is denied. However, if Defendants are aware of any information which may affect the impartiality of the court, they shall immediately bring that information to the court’s attention. In that event, the court will reconsider its decision.

II. Motion for Leave to File An Amended Complaint

Also pending is Plaintiff's Motion for Leave to File an Amended Complaint. (Filing No. [26](#).) [Rule 15\(a\)](#) of the Federal Rules of Civil Procedure provides that leave to amend "shall be freely given when justice so requires." The applicable standard is summarized in [Foman v. Davis, 371 U.S. 178, 182 \(1962\)](#), which states:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits. In the absence of any apparent reason-such as undue delay, bad faith or dilatory motive on the part of the movant, ... undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be "freely given."

[Id.](#)

Here, the parties have not yet engaged in discovery and this matter has not yet been subject to a progression order. Further, Defendants have not opposed Plaintiff's Motion to Amend. The court has carefully reviewed the proposed Amended Complaint and finds that amendment would not be futile and is not made in bad faith. Rather, the proposed Amended Complaint clarifies the claims made and is more specific regarding the named Defendants against whom relief is sought. The Motion for Leave to File an Amended Complaint is therefore granted.

Defendants filed a Motion to Dismiss the original Complaint on August 14, 2008. (Filing No. [21](#).) On October 6, 2008, Defendants filed a Motion to Dismiss Amended Complaint and a Brief in Support. (Filing Nos. [28](#) and [29](#).) The first Motion to Dismiss is denied as moot. With respect to the second Motion to Dismiss, on the court's own Motion, Plaintiff shall have until December 8, 2008, to file a response to the Motion. In the event

that Plaintiff fails to file a response by that date, the court will rule on the Motion to Dismiss without further notice.

III. Motion for Reconsideration

In his Motion for Reconsideration, Plaintiff seeks reconsideration of the court's July 21, 2008, Memorandum and Order. (Filing No. [18](#).) In particular, Plaintiff seeks to amend his Complaint to clarify in which capacity Defendants are sued and seeks additional time in the law library. (Filing No. [19](#).) As set forth above, Plaintiff is permitted to amend his Complaint. However, the court has carefully reviewed Plaintiff's Motion and finds no good cause for reconsideration of any other portion of its July 21, 2008 Memorandum and Order.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Change of Venue and for Recusal (Filing No. [30](#)) and Motion for Reconsideration (Filing No. [19](#)) are denied;
2. Plaintiff's Motion for Leave to File an Amended Complaint (Filing No. [26](#)) is granted. The Clerk of the court is directed to file the Amended Complaint as a separate filing in this matter;
3. Defendants' August 14, 2008, Motion to Dismiss (Filing No. [21](#)) is denied as moot. Defendants' October 8, 2008, Motion to Dismiss (Filing No. [28](#)) remains pending; and
4. Plaintiff shall have until December 8, 2008, to file a response to the pending Motion to Dismiss. In the event that Plaintiff fails to file a response by that date, the court will rule on the Motion to Dismiss without further notice.

DATED this 7th day of November, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge